

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MKS INSTRUMENTS, INC.,

Plaintiff,

No. C 09-02297 JSW

v.

NEW POWER PLASMA and DOES 1-10,
inclusive,

Defendants.

**NOTICE OF QUESTIONS RE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON
JUNE 24, 2009 AT 11:00 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to rely on authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, with reference to pin cites and without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority. The Court suggests that associates or of counsel attorneys who are working on this case be permitted to address some or all of the Court's questions contained herein.

The parties shall each have 15 minutes to address the following questions:

1. What is the purpose and scope of the tests being run on New Power Plasma's ("NPP") products at Applied Materials?
2. Does *Roche Products, Inc. v. Bolar Pharmaceutical Co.*, 733 F.2d 858, 861, 863 (Fed. Cir. 1984), establish that the experimental use conducted with a view to the adaption of the patented product to NPP's business a violation of the rights of the patentee? What is the scope of the experimental use exception in this context?
3. Should the Court grant the application for a temporary restraining order, what would be the appropriate bond amount?
4. Do the parties have anything further they wish to address?

IT IS SO ORDERED.

Dated: June 23, 2009



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE